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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,488	04/26/2001	Vincent Pluvinage	RXSD1001-3	8079
22470 7590 01/02/2008 HAYNES BEFFEL & WOLFELD LLP P O BOX 366 HALF MOON BAY, CA 94019			EXAMINER BATES, KEVIN T	
			ART UNIT 2153	PAPER NUMBER
			MAIL DATE 01/02/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/830,488

Applicant(s)

PLUVINAGE ET AL.

Examiner

Kevin Bates

Art Unit

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 146, 148, 174-179 and 189-196 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 146, 148, 174-179, and 189-196 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

This Office Action is in response to a communication made on November 5, 2007.

Claims 1-145, 147, 149-173, 180-188 have been cancelled.

Claims 146, 148, 174-179, and 189-196 are pending in this application.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 146 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 146 contains the limitation "a computer program stored on the data storage medium executable by the data processor to communicate with an external data processing device **providing a user interface** supporting an interactive process using the audio transducer mounted on the headset to provide the hearing profile." It is unclear from this limitation what is providing the user interface. It could be interpreted to be provided by either the computer program or the external processing device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 146, 148, 174-179, and 189-196 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berger in view of Campbell (6212496).

Regarding claim 146, Berger teaches a device for producing customized audio data (Column 2, lines 2 – 3), comprising:

A headset, the headset including processing resources mounted thereon (Column 6, lines 23 – 28), including

a data processor (Column 6, lines 23 – 28); a data storage medium, coupled to the data processor, storing a hearing profile of a customer (Column 2, lines 54 – 59; see also Column 3, lines 41 – 45);

an audio transducer (Column 6, lines 23 – 28, the ADC, amplifier, and the speaker), coupled to the data processor; a communication port coupled to the processor (Column 6, lines 26 – 27; the antenna);

logic to produce customized audio data, by processing audio data received on the communication port from an external source using the hearing profile (Column 2, lines 54 – 65); and

a computer program stored on the data storage medium executable by the data processor to communicate with an external data processing device providing a user

interface supporting an interactive process using the audio transducer mounted on the headset to provide the hearing profile (Column 3, lines 20 – 38).

Berger only teaches an interactive process with a user interface involving a switch (Column 3, lines 31 – 33).

Campbell teaches an interactive process that determines a hearing profile using a hearing test (Column 5, line 60 – Column 6, line 19) and discloses that the hearing test signals can be either provided by the cellular phone (Column 5, lines 52 – 64) or by signal received from a source external to the cellular phone (Column 6, lines 49 - 52).

It would have been obvious for one of ordinary skill in the art at the time the invention was made to use Campbell's teaching of performing a hearing test in Berger's in order to create new hearing profiles or prescriptions for the user rather than having to have preprogrammed profiles.

Regarding claim 174, Berger teaches a method for producing a hearing profile, comprising:

providing a headset having an audio transducer (Column 6, lines 23 – 28);

coupling the headset via a communication channel to an external data processor having a user interface (Column 6, lines 23 – 28);

executing an interactive process using the user interface and the audio transducer to develop a hearing profile (Column 3, lines 20 – 38);

producing a customized audio data product using the hearing profile (Column 2, lines 54 – 65); and

playing the customized audio data product on the headset (Column 1, lines 63 – 67).

Berger only teaches an interactive process with a user interface involving a switch (Column 3, lines 31 – 33).

Campbell teaches an interactive process that determines a hearing profile using a hearing test (Column 5, line 60 – Column 6, line 19) and discloses that the hearing test signals can be either provided by the cellular phone (Column 5, lines 52 – 64) or by signal received from a source external to the cellular phone (Column 6, lines 49 - 52).

It would have been obvious for one of ordinary skill in the art at the time the invention was made to use Campbell's teaching of performing a hearing test in Berger's in order to create new hearing profiles or prescriptions for the user rather than having to have preprogrammed profiles.

Regarding claim 148, Berger teaches the audio data playback device of claim 146, wherein that the audio transducer comprises stereo speakers (Column 6, lines 25 – 27).

Regarding claim 175, Berger teaches the device of claim 174, wherein the customized audio data product comprises a transformation according to the hearing profile of the audio data product (Column 2, lines 54 – 65).

Regarding claim 178, Berger teaches the device of claim 174, including: logic to store the customized audio data product on a machine readable medium (Column 6, lines 5 – 10).

Regarding claim 179, Berger teaches the audio testing device of claim 174, indicate a port adapted to couple a removable data storage device to the data processor, and resources for playing an audio data product stored in the removable data storage device (Column 6, lines 5 – 10).

Regarding claims 189 and 193, Berger teaches the playback device of claims 146 and 174, wherein the hearing profile is provided by an interface allowing selection by the user according to personal preferences (Column 3, lines 20 – 38).

Regarding claims 191 and 195, Berger teaches the playback device of claims 146 and 174, including a computer program stored on the data storage medium executable by the processor to communicate with an external data processing device providing a user interface supporting an interactive process to modify the hearing profile (Column 3, lines 20 – 38).

Regarding claims 192 and 196, Berger teaches the playback device of claims 146 and 174, wherein the communication port comprises a port for wireless communication (Column 6, lines 25 – 27).

Regarding claim 176, Berger teaches the device of claim 174.

Berger does not explicitly indicate an interface by which the customized audio data product is received from a remote site.

Campbell teaches a system for having a hearing profile creating customized audio data that includes (Column 3, lines 14 – 16) an interface by which the customized audio data product is received from a remote site (Column 6, lines 39 – 43).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Campbell's teaching of having a cellphone maintain the profile and perform the customization for the hearing aid in order to allow the complex phone perform the operations and allow the hearing aid to be a simpler and not have to perform the transformation of the audio.

Regarding claim 177, Berger teaches the device of claim 174.

Berger does not explicitly indicate wherein the customized audio data product comprises at least a portion of the hearing profile, and the audio data product for transformation according to the hearing profile at a remote site.

Campbell teaches teaches a system for having a hearing profile creating customized audio data that includes (Column 3, lines 14 – 16) the customized audio data product comprises at least a portion of the hearing profile, and the audio data product for transformation according to the hearing profile at a remote site (Column 6, lines 39 – 43).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Campbell's teaching of having a cellphone maintain the profile and perform the customization for the hearing aid in order to allow the complex phone perform the operations and allow the hearing aid to be a simpler and not have to perform the transformation of the audio.

Regarding claims 190 and 194, Berger teaches the device of claims 146 and 174.

Berger does not explicitly indicate the hearing profile is provided using the interface according to a hearing test.

Campbell teaches a system for having a hearing profile creating customized audio data that includes (Column 3, lines 14 – 16) the hearing profile is provided using the interface according to a hearing test (Column 5, line 60 – Column 6, line 19).

It would have been obvious for one of ordinary skill in the art at the time the invention was made to use Campbell's teaching of performing a hearing test in Berger's in order to create new hearing profiles or prescriptions for the user rather than having to have preprogrammed profiles.

Response to Arguments

Applicant's arguments filed November 5, 2007 have been fully considered but they are not persuasive.

The applicant argues that the reference, Berger, does not disclose "to communicate with an external data processing device providing a user interface." The applicant seems to be indicating in the arguments that the external data processing device seems to have some role within the idea of providing a user interface. Berger as shown in Column 3, lines 30 – 33, discloses a user interface for accepting a switch between hearing profiles. It is unclear in interpreting the claimed limitations that there is

anything more that Berger needs to show regarding the user interface supporting the interactive process to provide the hearing profile or whether the fact that device communicating with an external processing device factors into the program on the device providing a user interface. Despite this the examiner has added an additional reference, Campbell, to further teach the interactive process with a user interface (Column 5, line 60 – Column 6, line 19) which at least in part can be received from a source external to the cellular phone (Column 6, lines 49 - 52).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Bates whose telephone number is (571) 272-3980. The examiner can normally be reached on 9 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on (571) 272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kevin Bates
December 27, 2007